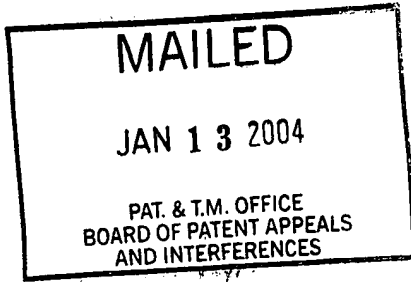


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte STEVEN C. DAKE
and
PAUL E. LUSE

Application No. 09/469,277

ORDER RETURNING UNDOCKETED APPEAL

This application was received at the Board of Patent Appeals and Interferences on December 15, 2003. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith returned to the examiner. The matters requiring attention prior to docketing are identified below.

On March 10, 2003, appellants filed a Notice of Appeal (Paper No. 8) "from the decision of the Primary Examiner dated December 2, 2002 [Paper No. 4] finally rejecting Claim(s) 1-21 and 28-32." The "Status of the Claims" appearing in the Appeal Brief filed April 30, 2003 (Paper No. 10) states:

The application was originally filed with claims 1-27. Claims 28-32 were added by amendment. Claims 1-21 and 28-32 remain pending. Claims 1-2, 6-10, 16-21, and 28-32 are the subject of this appeal. The rejection of claims 3-5 and 11-15 is not being appealed. [Emphasis added.]

The Examiner's Answer mailed August 26, 2003 (Paper No. 11) states on page 2 that "[t]he statement of the status of the claims contained in the brief is correct." Confusion exists regarding the claims on appeal. In particular:

1. Page 4 of the Examiner's Answer states that "Claims 1-17 and 19-21 are rejected under 35 U.S.C. 112 first paragraph" while page 5 states that "[c]laim(s) 1-17 and 19-27 are rejected under 35 U.S.C. 112, first paragraph." It should be noted that claims 22-27 were cancelled by the paper entitled "REPLY TO PAPER NO. 2" filed October 23, 2002 (Paper No. 3);
2. Claims 3-5 and 11-15 were included in the § 112, first paragraph, rejection on pages 4 and 5 of the Examiner's

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Answer as well as the § 103(a) rejections appearing on pages 20 and 21 of the Examiner's Answer.


Clarification of the claims on appeal is required.

Accordingly, it is

ORDERED that the application is returned to the examiner for issuance of a Supplemental Examiner's Answer which clarifies the claims on appeal, and for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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